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**OCT 05 2006**

**OFFICE OF PETITIONS**

In re Application of :  
Helynn Smith :  
Application No. 10/633,782 : ON PETITION  
Filed: 4 August, 2003 :  
Atty Docket No. SMITH-H :

This is a decision on the paper entitled "COVER SHEET FOR PETITION SUBMISSION," filed on 13 July, 2006 (certificate of mailing date 7 July, 2006), which is treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

This application became abandoned on 11 June, 2006, for failure to timely submit a reply to the final Office action mailed on 10 January, 2006, which set a three (3) month shortened statutory period for reply. A two (2) month extension of time was filed on 13 July, 2006 (certificate of mailing date 7 July, 2006). The filing of the present petition precedes the mailing of Notice of Abandonment.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to non-receipt of the Office action mailed on 10 January, 2006.

A review of the record indicates no irregularity in the mailing of the Office communication mailed on 10 January, 2006, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.<sup>1</sup> For example, if a three month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

The showing of record is insufficient to warrant withdrawal of the holding of abandonment at this time. Petitioner has not provided the showing discussed above.

Further, with respect to petitioner's request for "an additional month, until August 10, 2006" to respond to the final Office action, the Office action stated that in no event may a timely reply be filed after SIX (6) MONTHS from the mailing date thereof. 35 U.S.C. 133 states that upon failure of the applicant to prosecute the application within six months after any action thereon, the application shall be regarded as abandoned. Accordingly, extensions of time beyond six (6) months are not permitted by the patent statute, and the application is abandoned as a matter of law.

As such the application is properly held abandoned.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Extensions of time are permitted under 37 CFR 1.136(a). In the alternative, petitioner may wish to file a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                Mail Stop Petition  
                          Commissioner for Patents  
                          P.O. Box 1450  
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<sup>1</sup> M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

By FAX: (571) 273-8300  
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Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



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